

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

DALE TOWNSEND,)	
)	
Plaintiff,)	
VS.)	CASE NO. 1:24-cv-120
)	
SMITH’S GARAGE & TRUCKING, INC.,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant, Smith’s Garage & Trucking, Inc. (“Smith’s Garage”), by and through its undersigned counsel, hereby provides notice pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 of the removal of *Dale Townsend v. Smith’s Garage & Trucking, Inc.*, Cause No. 90C01-2402-PL-000006 (“State Court Action”) from the Wells Circuit Court, to the United States District Court for the Northern District of Indiana. The United States District Court for the Northern District of Indiana has original federal question jurisdiction over claims that arise under the laws of the United States; hence, federal jurisdiction exists in this case. Defendant provides the following short and plain statement of the grounds for removal:

1. On or about February 14, 2024, Plaintiff Dale Townsend filed a Complaint (“Complaint”) in the Wells Circuit Court, captioned *Dale Townsend v. Smith’s Garage & Trucking, Inc.*, Cause No. 90C01-2402-PL-000006 (previously defined as “State Court Action”). Defendant was served with the Complaint on or about February 20, 2024.

2. The Complaint alleges multiple counts against Defendant, alleging violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §201 *et. seq.*, Indiana's Minimum Wage Statute, and Wage Payment Statute, I.C. §22-2-5 *et. seq.*,

3. This action is properly removed. The procedural requirements of removal are met. Plaintiff's allegations establish that this Court has subject matter jurisdiction.

I. THE PROCEDURAL REQUIREMENTS OF REMOVAL ARE MET.

4. True and correct copies of all process, pleadings, and orders served in the State Court Action are attached as **Exhibit A** to this Notice pursuant to 28 U.S.C. § 1446(a).

5. This Notice of Removal is filed within thirty (30) days after the receipt by Defendant, through service, of a copy of the Complaint in the State Court Action. Accordingly, removal is timely pursuant to 28 U.S.C. § 1446(b).

6. The United States District Court for the Northern District of Indiana is the United States District Court for the district embracing the place where the State Court Action was filed, Wells County, Indiana. It is therefore the proper forum for removal pursuant to 28 U.S.C. § 94(a). Venue lies in this Court pursuant to 28 U.S.C. § 1441(a).

7. A copy of this Notice of Removal is being served on Plaintiff via United States mail and email to its counsel of record in the State Court Action, and a copy is being filed with the State Court. 28 U.S.C. § 1446(d).

II. THIS COURT HAS SUBJECT MATTER JURISDICTION.

8. An action may be removed from state court to federal court if the action could have originally been brought in federal court. 28 U.S.C. § 1441(a). Here, This Court has original federal question jurisdiction over claims that arise under the laws of the United States; hence, federal jurisdiction exists in this case.

9. This Court has original federal question jurisdiction over claims that arise under the laws of the United States. 28 U.S.C. § 1331; *see also* 28 U.S.C. § 1441. A lawsuit filed in state court is removable if it affirmatively alleges a federal claim. *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003). The presence or absence of a federal question is governed by the "well-pleaded

complaint rule," which provides that federal jurisdiction exists when a federal question is presented on the face of a plaintiff's complaint. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004).

10. In his Complaint, the Plaintiff alleges that Defendant violated the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et. seq. Plaintiff's claims are based on alleged violations of federal statutes over which this Court has original jurisdiction. Given that the federal court has original jurisdiction over such actions, removal to federal court is proper pursuant to 28 U.S.C. § 1441.

11. Accordingly, pursuant to the requirements set forth in 28 U.S.C. §§ 1331, 1441, 1446, Defendant removes this action from the Wells Circuit Court to the United States District Court for the Northern District of Indiana.

CONCLUSION

WHEREFORE, notice is given that the State Court Action is removed from the Wells Circuit Court, to the United States District Court for the Northern District of Indiana.

Dated: March 15, 2024

/s/ Sarah L. Schreiber

Sarah L. Schreiber, #31416-64

HallerColvin PC

444 East Main Street

Fort Wayne, Indiana 46802

Telephone: (260) 426-0444

Fax: (260) 422-0274

Email: sschreiber@hallercolvin.com

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2024, a true and correct copy of the foregoing Notice of Removal was served on the following parties electronically by using the Court's CM/ECF System or U.S. mail, prepaid delivery, for the parties not registered, to:

Ronald E. Weldy, Esq.
WELDY LAW
11268 Governors Lane
Fishers, IN 46037
rweldv@weldvlegal.com

/s/ Sarah L. Schreiber
SARAH L. SCHREIBER